



## Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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# MEMORANDUM

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Date	Action Requested
May 18, 2006	Please Review
To	Deadline
Court Facilities Transitional Task Force	N/A
From	Contact
Kim Davis, Director, Office of Court Construction and Management (OCCM)	N/A
Robert Emerson, Assistant Director for Business and Planning, OCCM	
Gisele Corrie, Financial Manager, OCCM	
Kelly Popejoy, Manager of Planning, OCCM	
Alan Oxford, Senior Budget Analyst, OCCM	
Subject	
Designation of 25% of State Court Facilities Construction Fund Collections by County	

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### **Issue Statement.**

*Government Code Section 70374(d) states the following: "Twenty-five percent of all money collected for the State Court Facilities Construction Fund from any county shall be designated for implementation of trial court projects in that county. The Judicial Council shall determine the local projects after consulting with the trial court in that county and based on the locally approved trial court facilities master plan for that county."*

This section of the Government Code has generated a number of questions from the trial courts regarding how the 25% designation of State Court Facilities Construction Fund (SCFCF) described in this code section will be applied to their court. Proposals have been advanced to use these designated funds for facility modification projects or as partial funding for a local capital project. There is a need for an interim policy to provide guidance on how to best handle such requests for use of these designated funds.

**Recommendation.**

An interim policy relating to the 25% designation should be adopted to cover the next 12-month period. This policy will permit use of these designated funds for funding of major capital projects, under certain conditions. Use of the designated funds to augment state funding of facility modifications should also be allowed, with limitations and certain conditions.

The interim policy for 25% designation from the SCFCF shall consist of the following:

- Transfer of responsibility to the State for the underlying facility or facilities being replaced or modified must be a pre-requisite for approval of any requests for use of the designated funds.
- A request to the Judicial Council to encumber future projected revenues comprised by the 25% designated funds for a new major capital project should only be approved if a site for the project has been reasonably secured, the facility program and cost estimates fully developed, and all other funding sources required to complete the project have been identified and allocated. Because the interim and future policy on the use of 25% designated funds may direct these funds to cover those facility modifications not otherwise funded by the SCFCF appropriation, a court requesting encumbrance of the 25% for a capital investment must assure itself that unfunded facility modifications are less critical.
- A request to the Council to use the annual 25% designated revenues for facility modifications shall take into account the timing of facility transfers in that court and the demands for facility modifications of the full court inventory once all are transferred.
- In addition to Council approval, requests for use of the 25% designation may require approval to increase our authorized SCFCF appropriation spending level by the Department of Finance and the Legislature prior to final authorization. This may require significant additional lead time to obtain actual funding authorization and must be a consideration in determining the feasibility of a proposal.

**Rationale for Recommendation.**

Use of the designated SCFCF as partial funding for a major capital project should only be permitted when the court has substantial other funding sources to complete the project. It is not anticipated that many courts will have sufficient revenue to fully complete a new capital project using the 25% designated revenue alone. In addition, the project should be well developed in terms of site selection, program scope schedule, and estimated costs before any requests of use of designated SCFCF will be considered. Banking of the 25% designated revenue by an individual court with out application to a feasible construction project is not recommended as it precludes a statewide approach to leveraging financial resources to meet the most urgent needs.

To the extent that a future policy directs most or all of the 25% revenues to facility modifications to cover top-tier critical needs statewide (priority 1 or 2) with replenishment of the 25% at a later

date, loss of the statewide leveraging of the 25% would unfairly benefit those courts that encumbered the 25% as they would receive the benefit of other courts' contributions to the statewide pool of funds.

To the extent that a future policy directs some or all of the 25% revenues to facility modifications to cover unfunded, less critical modifications that an individual court selects to proceed with those funds on an annual basis, encumbrance of a court's 25% for debt financing would preclude this flexibility for the local court.

Interim use of the 25% revenue for facility modifications projects not otherwise funded by the statewide pool of funds appropriated for this purpose must be carefully considered to allow for the incremental transfer of facilities within that county. Careful planning and assessment of conditions and needs will allow prudent pacing of use of the funds so that needs of higher priority of later transferred facilities are not left unfunded.

**Alternatives Considered.**

*Option 1 – Allow immediate use of 25% of designated SCFCF for projects that include facilities that have not yet transferred to the State.* This option is not feasible. The State Department of Finance prohibits use of SCFCF for projects for which the underlying facilities have not transferred to the State.

*Option 2 - Defer any use of 25% of designated SCFCF until all facilities have transferred to the State and the outcome of bond measures is known.* This option is not recommended as it would restrict expenditures on projects that are a high priority. In addition, waiting to use the funds until there is more finality about transfers and bond measures increases the risk that funding will be left on the table. In past years when there were serious budget shortfalls, the State has swept SCFCF for other uses. Although the State has partially repaid these funds, and has promised to repay the balance, there is no certainty that this would be the case in the future if funding were redirected.

*Option 3 – Allow 25% of designated SCFCF to be “reserved” in individual court accounts that are earmarked until a fully funded capital project can be realized with the addition of State or other funds.* This option is not recommended as the impact of allowing individual courts to tie up funding for their own projects may be unfair to courts in other counties. For example, if a court in one county sets aside its funds for a decade or more of accumulation, those may not be utilized by courts in other counties that may have urgent needs. This option would minimize the optimization of spending according to a statewide vision. Capital spending should proceed in accordance with a plan that takes due consideration of the prioritization of projects based on uniform statewide application of Council-approved criteria.

*Option 4 - Allow use of 25% of designated SCFCF only for facility modifications projects (and not for major capital projects).* This option may prove to be a reasonable choice, however it is too early to assess whether this makes the most sense. The full extent of the demand for facility modifications projects is as yet unknown. If the demand is low, it may make sense to allow use of some of these funds for capital projects. In addition, the fate of the pending bond measures

for capital infrastructure projects is also unknown. If the bond measures do not pass, it may be necessary to use some of these funds for capital projects.

**Additional Background Information.**

Several items should be noted regarding the statutory language in the Government Code section:

- 1) The statutory language does not specify a compliance date.
- 2) The statutory language specifies money collected from counties for the SCFCF, and does not address other funding sources such as the General Fund, the Court Facilities Trust Fund, the local Courthouse Construction Fund, or funds established for proceeds from General Obligation bonds.
- 3) The statutory language states that the Judicial Council shall determine local projects in consultation with the trial courts and based on the “trial court facilities master plan” for that county. It should be noted that the trial court facilities master plans do not address facility modifications projects.
- 4) There are no reporting requirements specified in the statutory language.